

(Dol. Rev. 12/98)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

2005 SEP -2 Pii 2: 36

GLORIA NIEVES

(Name of Plaintiff or Plaintiffs)

v.

CIVIL ACTION No. 05 - 646

Acma Supermarkets

(Name of Defendant or Defendants)

COMPLAINT UNDER TITLE VII
OF THE CIVIL RIGHTS ACT OF 1964

1. This action is brought pursuant to *Title VII of the Civil Rights Act of 1964*, as amended, for employment discrimination. Jurisdiction exists by virtue of 42 U.S.C. §2000e-5. Equitable and other relief are also sought under 42 U.S.C. §2000e-5(g).

2. Plaintiff resides at 625 Village Drive
(Street Address)
Middletown DE 19709
(City) (County) (State) (Zip Code)
302 - 378 - 8207
(Area Code) (Phone Number)

3. Defendant resides at, or its business is located at 75 Valley Stream Pky
(Street Address)
Milvern PA 19355
(City) (County) (State) (Zip Code)

4. The discriminatory conduct occurred in connection with plaintiff's employment at, or application to be employed at, defendant's Acma Supermarket place of business
(Defendant's Name)
located at 460 East Main street
(Street Address)
Middletown DE 19706
(City) (County) (State) (Zip Code)

5. The alleged discriminatory acts occurred on 24 7 2003
 (Day) (Month) (Year)

6. The alleged discriminatory practice ☒ is ☐ is not continuing.

7. Plaintiff filed charges with the Department of Labor of the State of Delaware,
State of Delaware Department of labor.
 (Agency) (Street Address) (City)
4425 N. Market St. Wilmington DE 19802, regarding
 (County) (State) (Zip Code)
 defendant's alleged discriminatory conduct on 16 3 2004
 (Day) (Month) (Year)

8. Plaintiff filed charges with the Equal Employment opportunity Commission of the United States
 regarding defendant's alleged discriminatory conduct on: 18 4 2005
 (Day) (Month) (Year)

9. The Equal Employment Opportunity Commission issued the attached Notice-of-Right-to-Sue letter
 which was received by plaintiff on: 6 6 2005
 (Day) (Month) (Year)

(NOTE: ATTACH NOTICE-OF-RIGHT-TO-SUE LETTER TO THIS COMPLAINT.)

10. The alleged discriminatory acts, in this suit, concern:

- A. ☒ Failure to employ plaintiff.
 B. ☒ Termination of plaintiff's employment.
 C. ☒ Failure to promote plaintiff.
 D. ☒ Other acts (please specify below)

Coworkers constantly harassed and subjected
me to physical threats and name
calling because I spoke English with
a Spanish accent.

11. Defendant's conduct is discriminatory with respect to the following:

- A. ☒ Plaintiff's race
- B. ☒ Plaintiff's color
- C. ☒ Plaintiff's sex
- D. ☒ Plaintiff's religion
- E. ☒ Plaintiff's national origin

12. A copy of the charges filed with the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of plaintiff's claim.

13. If relief is not granted, plaintiffs will be irreparably denied rights secured by Title VII of the 1964 Civil Rights Act, as amended.

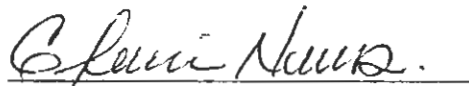
14. Plaintiff's has no adequate remedy at law to redress the wrongs described above.

THEREFORE, Plaintiff prays as follows: (Check appropriate letter(s))

- A. ☒ That all fees, cost or security attendant to this litigation be hereby waived.
- B. ☒ That the Court appoint legal counsel.
- C. ☒ That the Court grant such relief as may be appropriate, including injunctive orders, damages, cost and attorney's fees.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 9-2-05


(Signature of Plaintiff)

(Signature of additional Plaintiff)

STATE OF DELAWARE
DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS – DISCRIMINATION UNIT

Ms. Gloria Nieves
626 Village Dr.
Middletown, DE 19709
vs.
Acme Supermarkets
75 Valley Stream Pky.
Malvern, PA 19355
Attn: Tamara Marshall

04040397

FINAL DETERMINATION AND RIGHT TO SUE NOTICE

Pursuant to 19 Del. C. § 710, *et seq.*, the parties in the above-captioned matter are hereby Noticed of the Department's Final Determination and Right to Sue Notice, as follows:

Reasonable Cause Determination and Notice of Mandatory Conciliation.

In this case, the Department has completed its investigation and found that there is reasonable cause to believe that an unlawful employment practice has occurred. Under the provisions of the law, the parties are now required to engage in mandatory conciliation with Thomas J. Smith. Please be prepared to appear for conciliation on the following date and time Monday April 18th 2005 9am at the location of Delaware Dept. of Labor, 4425 N. Market St. Wilmington, DE 19802.

Your cooperation and good faith effort is anticipated. Your corresponding Delaware Right to Sue Notice will be effective one day after your compliance with the conciliation effort.

The reasonable cause finding is based primarily on the following facts:

Charging Party alleges that coworkers constantly harassed and subjected her to physical threats and name calling because she spoke English with a Spanish accent. She further stated these same individuals deliberately attempted to create circumstances for her termination. Statements from a former coworker confirmed that the Charging Party was harassed by these individuals because of her national origin. Further, when she complained to management, no action was taken to end this behavior.

This Final Determination is hereby issued on behalf of the Department of Labor, Division of Industrial Affairs, Discrimination Unit. See the attached Notice of Rights.

3/31/05
Date issued

4/18/05 - CP failed to attend
Date conciliation completed

Julie K. Cutler
Julie K. Cutler, Administrator

Julie K. Cutler
Julie K. Cutler, Administrator

Delaware Department of Labor, Division of Industrial Affairs, 4425 N. Market St., Wilmington, DE 19802

NOTICE OF DELAWARE RIGHTS

The Department of Labor Discrimination Unit provides the following excerpt from 19 Del. C. § 710, et seq. as information regarding the Delaware Right to Sue Notice. If you need legal advice, please seek your own legal counsel.

§ 714. Civil action by the Charging Party; Delaware Right to Sue Notice; election of remedies.

(a) A Charging Party may file a civil action in Superior Court, after exhausting the administrative remedies provided herein and receipt of a Delaware Right to Sue Notice acknowledging same.

(b) The Delaware Right to Sue Notice shall include authorization for the Charging Party to bring a civil action under this Chapter in Superior Court by instituting suit within ninety (90) days of its receipt or within ninety (90) days of receipt of a Federal Right to Sue Notice, whichever is later.

(c) The Charging Party shall elect a Delaware or federal forum to prosecute the employment discrimination cause of action so as to avoid unnecessary costs, delays and duplicative litigation. A Charging Party is barred by this election of remedies from filing cases in both Superior Court and the federal forum. If the Charging Party files in Superior Court and in a federal forum, the Respondent may file an application to dismiss the Superior Court action under this election of remedies provision.

NOTICE OF FEDERAL RIGHTS

1. If your case was also filed under federal law and resulted in a "No Cause" finding, you have additional appeal rights with the Equal Employment Opportunity Commission. Under Section 1601.76 of EEOC's regulations, you are entitled to request that EEOC perform a Substantial Weight Review of the DDOL's final finding. To obtain this review, you must request it by writing to EEOC within **15 days of your receipt** of DDOL's final finding in your case. Otherwise, EEOC will generally adopt the DDOL's findings.

2. If your case was also filed under federal law, you have the right to request a federal Right to Sue Notice from the EEOC. To obtain such a federal Right to Sue Notice, you must make a written request directly to EEOC at the address shown below. Upon its receipt, EEOC will issue you a Notice of Right to Sue and you will have ninety (90) days to file suit. The issuance of a Notice of Right to Sue will normally result in EEOC terminating all further processing.

3. Requests to the EEOC should be sent to:

Equal Employment Opportunity Commission
The Bourse, Suite 400
21 S. Fifth Street
Philadelphia, PA 19106-2515

Delaware Department of Labor, Division of Industrial Affairs, 4425 N. Market St., Wilmington, DE 19802

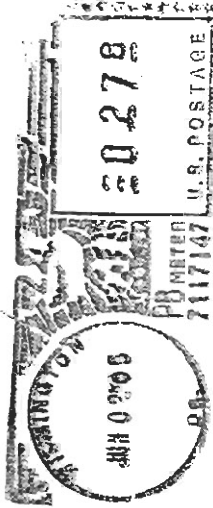
STATE OF DELAWARE
DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS

P.O. BOX 9954
WILMINGTON, DE 19809-9954

"Official Business, Penalty For Private Use \$300.00"
60-07-001

05-05-05294L 110212D-SRUTH15

RECEIVED
JUN 15 2005



Ms. Gloria Nieves
18164 Northwest
62 Court
Miami, FL 33015

33015

CHARGE OF DISCRIMINATION**ENTER CHARGE NUMBER**

This form is affected by the Privacy Act of 1974

☐ FEPA
☐ EEOC
04040397
17CA400389**Delaware Department of Labor**

and EEOC

(State, or local Agency, if any)

NAME (Indicate Mr., Mrs., Ms)

Gloria Nieves

HOME TELEPHONE NO. (Include Area Code)

302-378-8207

STREET ADDRESS**CITY, STATE AND ZIP CODE****COUNTY**

625 Village Drive Middletown De 19709 NC

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one, list below.)**NAME**

Acme Supermarkets

NO. OF EMPLOYEES OR MEMBERS 100+**TELEPHONE NUMBER** (Incl. Area Code)

302 449 1870

STREET ADDRESS**CITY, STATE AND ZIP CODE**

460 East Main Street Middletown De. 19706

NAME**TELEPHONE NUMBER** (Include Area Code)**STREET ADDRESS****CITY, STATE AND ZIP CODE**
☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☒ NATIONAL ORIGIN ☐ AGE
DATE DISCRIMINATION TOOK PLACE**EARLIEST** 7/24/2003
☒ RETALIATION ☐ DISABILITY ☐ OTHER (Specify)
LATEST 3/16/2004☒ CONTINUING ACTION**THE PARTICULARS ARE** (If additional space is needed, attached extra sheet(s):

I. I am a Hispanic female of Columbian origin who began to work for the Respondent on 11/12/01. On or about the end of July, 2003 I began to be subjected to disparate treatment than my similarly situated English speaking, American co-workers. Since I cannot speak English as well as my co-workers I am harassed and held up to ridicule. My co-workers make false accusations to my supervisors that I violate employee rules. I have complained to my supervisors about this treatment and nothing is done to remedy the situation. I believe the reason why I am treated differently by my co-workers is because I can speak spanish to store customers to assist them and they cannot. Most recently when I have reported these problems with my co-workers to the Respondent I was suspended from work for one week.

II. The Respondent has stated the reason I was suspended from work was because I did not treat a coworker with courtesy, dignity, and respect.

III. I believe I have been discriminated against in violation of Title VII of the Civil Rights Act of 1964 as amended and the Delaware Discrimination in Employment Act as amended based on my national origin (Columbian) because 1. My co-worker Nancy (White/last name unknown), Deli Worker told me I needed to speak only english at work. 2. My co-worker Joyce Alpin, (White) Deli Server, falsely accused me of throwing food and a bucket of mop water in her face. 3. My co-workers Nancy and Christina Shuw (White), Deli Server, made derogatory racial comments about my ability to speak english clearly and that I did not deserve to be given a full time position. 4. When I reported the problems I was having with my co-workers to the Respondent, no investigation was conducted. 5. My white co-workers specifically Michelle Warren (White) Deli Server, has violated company policy and was not disciplined for this infraction. 6. The incident for which I was suspended was never investigated and the store surveillance system was not reviewed. 7. Other than this incident I have never been disciplined for any infraction of store policy and received praise from my managers for my performance. 8. "BJ" (White/Female) last name unknown, Assistant Store Manager, said that if my husband came into the store she would have someone physically harm him.

☒

I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

SIGNATURE OF COMPLAINANT

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

NOTARY - (When necessary to meet State and Local Requirements)

4-2-04

Gloria Nieves

Date**Charging Party** (Signature)**Subscribed and sworn to before me this date**

(Day, month, and year)